

dying after December 31, 2009, and before the date of the enactment of this Act, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by this section do not apply with respect to such estate and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate.

(d) **EXTENSION OF TIME FOR PERFORMING CERTAIN ACTS.**—

(1) **ESTATE TAX.**—In the case of the estate of a decedent dying after December 31, 2009, and before the date of the enactment of this Act, the due date for—

(A) filing any return under section 6018 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) as such section is in effect after the date of the enactment of this Act without regard to any election under subsection (c),

(B) making any payment of tax under chapter 11 of such Code, and

(C) receiving any disclaimer described in section 2518(b) of such Code, shall not be earlier than the date which is 4 months after the date of the enactment of this Act.

(2) **GENERATION-SKIPPING TAX.**—In the case of any generation-skipping tax made after December 31, 2009, and before the date of the enactment of this Act, the due date for filing any return under section 2662 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) shall not be earlier than the date which is 4 months after the date of the enactment of this Act.

(e) **EFFECTIVE DATE.**—Except as otherwise provided in this section, the amendments made by this section shall apply to estates of decedents dying, and transfers, after December 31, 2009.

SEC. 303. MODIFICATIONS TO ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES.

(a) **MODIFICATIONS TO ESTATE TAX.**—

(1) **\$3,500,000 APPLICABLE EXCLUSION AMOUNT.**—Subsection (c) of section 2010 is amended to read as follows:

“(c) **APPLICABLE CREDIT AMOUNT.**—

“(1) **IN GENERAL.**—For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

“(2) **APPLICABLE EXCLUSION AMOUNT.**—

“(A) **IN GENERAL.**—For purposes of this subsection, the applicable exclusion amount is \$3,500,000.

“(B) **INFLATION ADJUSTMENT.**—In the case of any decedent dying in a calendar year after 2010, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.”.

(2) **MAXIMUM ESTATE TAX RATE EQUAL TO 45 PERCENT.**—Subsection (c) of section 2001 is amended—

(A) by striking “but not over \$2,000,000” in the table contained in paragraph (1),

(B) by striking the last 2 items in such table,

(C) by striking “(1) **IN GENERAL.**—”, and

(D) by striking paragraph (2).

(b) **MODIFICATIONS TO GIFT TAX.**—

(1) **INFLATION ADJUSTMENT FOR APPLICABLE EXCLUSION AMOUNT FOR GIFT TAX.**—Section 2505 is amended by adding at the end the following new subsection:

“(d) **INFLATION ADJUSTMENT.**—In the case of any calendar year after 2010, the dollar amount in subsection (a)(1) shall be increased by an amount equal to—

“(1) such dollar amount, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.”.

(2) **MODIFICATION OF GIFT TAX RATE.**—On and after the date of the introduction of this Act, subsection (a) of section 2502 of the Internal Revenue Code of 1986 is amended to read as such subsection would read if section 511(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 had never been enacted.

(3) **CONFORMING AMENDMENT.**—Section 2511 of the Internal Revenue Code of 1986 is amended by striking subsection (c).

(4) **PERIOD OF REPEAL TREATED AS SEPARATE CALENDAR YEAR.**—

(A) **IN GENERAL.**—For purposes of applying sections 1015, 2502, and 2505 of the Internal Revenue Code of 1986, calendar year 2010 shall be treated as 2 separate calendar years one of which ends on the day before the date of the introduction of this Act and the other of which begins on such date of introduction.

(B) **APPLICATION OF SECTION 2504(b).**—For purposes of applying section 2504(b) of the Internal Revenue Code of 1986, calendar year 2010 shall be treated as one preceding calendar period.

(c) **MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX.**—In the case of any generation-skipping transfer made after December 31, 2009, and before the date of the introduction of this Act, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero.

(d) **MODIFICATIONS OF ESTATE AND GIFT TAXES TO REFLECT DIFFERENCES IN CREDIT RESULTING FROM DIFFERENT TAX RATES.**—

(1) **ESTATE TAX.**—

(A) **IN GENERAL.**—Section 2001(b)(2) is amended by striking “if the provisions of subsection (c) (as in effect at the decedent's death)” and inserting “if the modifications described in subsection (g)”.

(B) **MODIFICATIONS.**—Section 2001 is amended by adding at the end the following new subsection:

“(g) **MODIFICATIONS TO GIFT TAX PAYABLE TO REFLECT DIFFERENT TAX RATES.**—For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute—

“(1) the tax imposed by chapter 12 with respect to such gifts, and

“(2) the credit allowed against such tax under section 2505, including in computing—

“(A) the applicable credit amount under section 2505(a)(1), and

“(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).”.

(2) **GIFT TAX.**—Section 2505(a) is amended by adding at the end the following new flush sentence:

“For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.”.

(e) **EFFECTIVE DATE.**—Except as otherwise provided, the amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

SEC. 304. APPLICABLE EXCLUSION AMOUNT INCREASED BY UNUSED EXCLUSION AMOUNT OF DECEASED SPOUSE.

(a) **IN GENERAL.**—Section 2010(c), as amended by section 303(a), is amended by striking paragraph (2) and inserting the following new paragraphs:

“(2) **APPLICABLE EXCLUSION AMOUNT.**—For purposes of this subsection, the applicable exclusion amount is the sum of—

“(A) the basic exclusion amount, and

“(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

“(3) **BASIC EXCLUSION AMOUNT.**—

“(A) **IN GENERAL.**—For purposes of this subsection, the basic exclusion amount is \$3,500,000.

“(B) **INFLATION ADJUSTMENT.**—In the case of any decedent dying in a calendar year after 2010, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.

“(4) **DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.**—For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying on or after the date of the enactment of the Middle Class Tax Cut Act of 2010, the term ‘deceased spousal unused exclusion amount’ means the lesser of—

“(A) the basic exclusion amount, or

“(B) the excess of—

“(i) the basic exclusion amount of the last such deceased spouse of such surviving spouse, over

“(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

“(5) **SPECIAL RULES.**—

“(A) **ELECTION REQUIRED.**—A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

“(B) **EXAMINATION OF PRIOR RETURNS AFTER EXPIRATION OF PERIOD OF LIMITATIONS WITH RESPECT TO DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.**—Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may